

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT MARTINEZ VILLA,

Petitioner,

Case No. 5:02-CV-128

v.

Hon. Gordon J. Quist

DENNIS STRAUB,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. The court has dismissed petitioner's habeas action with prejudice and petitioner has filed a notice of appeal. This matter is now before the court for issuance of a certificate of appealability.

Under the amended provisions of the Habeas Corpus Act, a petitioner may not appeal in a habeas case unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). Amended Rule 22 of the Federal Rules of Appellate Procedure extends to district judges the authority to issue a certificate of appealability. FED. R. APP. P. 22(b). *See Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1073 (6th Cir.1997). Under 28 U.S.C. § 2253(c)(2), the court must determine whether a certificate of appealability should be granted. A certificate should issue if petitioner has demonstrated a "substantial showing of a denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2).

Here, petitioner's notice of appeal does not specify the issues that he sought to have reviewed on appeal. Under these circumstances, the court will deem petitioner's notice of appeal as a request for review of all issues. *See In re Certificates of Appealability*, 106 F.3d 1306, 1307

(6th Cir. 1997) (Admin. Ord.) (filing of a notice of appeal that does not specify the issues that petitioner seeks to have reviewed on appeal will be deemed a request for review of all issues). The court addressed the merits of petitioner's claims. To warrant a grant of the certificate after considering these constitutional claim on the merits, "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Applying this standard, the court finds no basis for issuance of a certificate of appealability. Petitioner has not pointed to any flaw in the court's reasoning or any issue of fact or law overlooked in the adjudication of his petition. For the reasons expressed in the court's order adopting the magistrate judge's report and recommendation, the court finds that reasonable jurists could not find that this court's dismissal of petitioner's claim was debatable or wrong.

Accordingly,

IT IS ORDERED that a certificate of appealability **shall not issue**.

Dated: September 23, 2005

s/Gordon J. Quist
Gordon J. Quist
United States District Judge